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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CODY A. FITCH,

Plaintiff and Appellant,

v.

REPUBLICAN PARTY OF THE USA,

Defendant and Respondent.

G049741

(Super. Ct. No. 30-2013-00669618)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,
Craig L. Griffin, Judge. Affirmed.

Cody A. Fitch, in pro. per., for Plaintiff and Appellant.

Baric & Associates and Steven D. Baric for Defendant and Respondent.

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I. Introduction

Plaintiff Cody A. Fitch (Plaintiff) filed a complaint against the Republican Party of the USA, asserting causes of action for professional negligence, breach of fiduciary duty, and breach of contract. Defendant¹ responded by bringing a special motion to strike pursuant to the anti-SLAPP statute, Code of Civil Procedure section 425.16² (section 425.16). The trial court granted Defendant's special motion to strike, and Plaintiff timely appealed. We affirm.

II. Complaint and Special Motion to Strike

Plaintiff's complaint is a "complaint" in the truest sense of the word: It is a list of grievances against Defendant, stemming, apparently, from Plaintiff's lack of a job for "around 4 years." As best as we can sum up, Plaintiff is alleging (1) Defendant allowed China to take over 500,000 American manufacturing plants, (2) Defendant allowed the "Liberal World Party" to "invade" the United States with over 500,000 "world leftist migrants" per year, and (3) Defendant breached its duty to him and to the United States to conserve business markets and to create jobs.

As a consequence, Plaintiff alleged, he "has actually lost over 11 years of his life in a good steady career and a good financial income." He alleged: "I am 31 . . . years old and have no wife, no car, no home and no career. Plaintiff thinks that is because the Republican Corporation will not properly deal with the liberal world party

¹ We refer to the party appearing as defendant in this action simply as Defendant. According to Defendant, there is no such entity called the "Republican Party of the USA." Defendant variously refers to itself as the "California Republican Party," the "Orange County Republican Party," or the "GOP" ("Grand Old Party"). Defendant contends Plaintiff failed to name the proper party but does not raise that issue as ground for affirmance.

² SLAPP stands for strategic lawsuit against public participation. (*Nguyen-Lam v. Cao* (2009) 171 Cal.App.4th 858, 862, fn. 1.)

criminal issues like they should. As the high unemployment and even higher criminal migrant job takers are an issue with me being able to survive and thrive and have a giant family and a career.”

In the prayer, Plaintiff sought, among other things, a meeting with Meghan McCain, \$50 million in punitive damages, \$90,000 for law school “so I can obtain a career and sue the Liberal World Party,” and “to be shown a Republican etiquette class.” Plaintiff prayed that the Republican Party “settle with me out of court for \$90 million and then meet me at an airport . . . [s]o I can fly to Germany to prepare to return and be more active in the Republican Party.”

Defendant responded to the complaint with the special motion to strike pursuant to section 425.16. In the motion, Defendant identified itself as the California Republican Party or GOP, and stated, “[t]he GOP is a private association dedicated to serving the purposes of nominating and electing persons affiliated with the party to public offices at the federal, state, and local levels and supporting issues which reflect the Party Platform.” The special motion to strike included a declaration from Scott Loenhorst, the executive director of the Orange County Republican Party, who declared:

“[1]. Over the last several months I have become aware of the Plaintiff sending our party thousands of emails. Many of these emails are offensive and threatening. (True and correct copies of emails from [Plaintiff] are attached as Exhibit ‘B’)

“[2]. I have personally read all of the email messages that are attached to this declaration. They are true and correct copies of the emails that we have retrieved from the OC GOP email account.

“[3]. Many of these emails are sexually graphic and threatening. I have become concerned about the safety of our volunteers and staff.”

Loenhorst declared that on September 24, 2013, Plaintiff sent several sexually explicit e-mails about Meghan McCain, on September 25, 2013 sent e-mails

about cutting heads and killing 1,500 people per year, and on October 1, 2013 left two voice mail messages on the Orange County Republican Party's main phone line, "ranting about the \$90 million he is owed by them."

Plaintiff filed opposition to the special motion to strike in the form of a memorandum of points and authorities and a declaration. In his memorandum of points and authorities, Plaintiff argued Defendant had not met its burden of showing his complaint arose from Defendant's protected activities because "Plaintiff is trying to take part in the political process and the defendant has chilled the Plaintiff[']s political process and speech by not professionally contacting the individual over a[n] 11 year period about serious issues of assassinations, war, economics and genocide."

The trial court granted Defendant's special motion to strike and dismissed the action with prejudice. Plaintiff's notice of appeal states it is from a "[j]udgment of dismissal after an order sustaining a demurrer," which we will liberally construe as being from the order granting Defendant's special motion to strike. An order granting or denying a special motion to strike under the anti-SLAPP statute is appealable. (§ 425.16, subd. (i).)

III. Discussion

"Section 425.16 provides for a special motion to strike '[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.' (§ 425.16, subd. (b)(1).)" (*Cabrera v. Alam* (2011) 197 Cal.App.4th 1077, 1085.) The trial court undertakes a two-step analysis in deciding the merits of an anti-SLAPP motion. First, the court must decide whether the defendant has made a threshold showing that the challenged cause of action arose from the defendant's protected activity. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 712.) If the defendant fails to satisfy this burden, then the special motion to strike must be denied.

(*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76.) If the trial court finds that such a showing has been made, then the court must decide whether the plaintiff has demonstrated a probability of prevailing on the challenged cause of action. (*Ibid.*) We independently review the trial court's order granting the special motion to strike under the de novo standard. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.)

An “act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue” includes “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).)

Defendant met its burden of making a threshold showing that all of Plaintiff's causes of action arose from protected activity under section 425.16, subdivision (e). Defendant is one of the two major American political parties. Its purpose is to nominate and seek election to public office of persons affiliated with the party, or who support the party's views, and to support and promote issues reflecting the party's platform. Plaintiff's grievances against Defendant arose directly out Defendant's exercise of constitutional rights of petition and free speech in connection with public issues under section 425.16, subdivision (e)(4). Plaintiff alleged, in effect, that Defendant's position on public issues and support of candidates have led to the loss of manufacturing jobs and to the other woes of which he complains.

Plaintiff did not meet his burden of demonstrating a probability of prevailing on his causes of action. To establish a probability of prevailing, the plaintiff must demonstrate the complaint is legally sufficient and is supported by a prima facie showing of facts sufficient to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. (*Cabrera v. Alam, supra*, 197 Cal.App.4th at pp. 1086, 1092.)

Plaintiff asserted three causes of action: (1) professional negligence, (2) breach of fiduciary duty, and (3) breach of contract. In opposing the anti-SLAPP motion, Plaintiff presented no law or evidence to demonstrate Defendant owed him a professional duty of care, owed him fiduciary duties, or entered into a contract with him. Plaintiff presented no law or evidence to demonstrate Defendant breached those duties or that contract. In his declaration in opposition to the special motion to strike, Plaintiff stated: “1. The Plaintiff . . . is a registered voter signed to be represented by the Republican Party of the USA. [¶] 2. The Plaintiff has called for 11 years and the scratch of evidence shows 3500 emails requesting and trying to get political representation. Plaintiff has 6 College degrees and is a retired Collegiate Senator of Criminal Justice. [¶] 3. The Defendant[] never made contact and in the 11 years have not dealt with his main issues of Mexican Invasion and Communist Chinese unfair business antitrust violations, thus causing major harm to the individual Plaintiff and the class of people he is in. [¶] 4. The Plaintiff is not feared by the Republican [P]arty as his contact messages for 11 years have been very upsetting, sexual in nature, and also very about war; however, always with regards to courts and military tribunals. [¶] 5. The Plaintiff deems the programmers as enable to program, be professional, desires punitive damages in \$50 million so he can retake the programmer nonprofit political corporation, and program for his political party members what the nonprofit should have done, defense of our [borders] and antitrust violators.” Plaintiff’s declaration did not meet his burden of establishing a probability of prevailing.

IV. Disposition

The order granting the special motion to strike is affirmed. Defendant shall recover costs incurred on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.